

U.S. Department of Justice

United States Attorney

Southern District of New York

DATE FILED: 8-26-08

86 Chambers Street, 3rd Floor
New York, New York 10007

August 25, 2008

BY HAND

The Honorable Richard M. Berman
 United States District Judge
 Daniel Patrick Moynihan United States Courthouse
 500 Pearl Street, Room 650
 New York, New York 10007

MEMO ENDORSED
 p.2

Re: McGrigs v Killian, 08 Civ. 6238 (RMB) (DCF)

Dear Judge Berman:

This Office represents Warden J.M. Killian of the Federal Correctional Institution in Otisville, New York, in the above-referenced habeas action, which seeks to challenge the calculation of Petitioner Frank McGrigg's prison sentence. The Government's response to McGrigg's petition is due by August 29, 2008, by order of Magistrate Judge Freeman.

I write to request permission to file one of the exhibits to the declaration that will accompany the Government's return under seal, because that exhibit will be petitioner's pre-sentence report relating to his 2006 narcotics conviction. In view of the strong interest in maintaining the confidentiality of petitioner's pre-sentence report, *see U.S. Dep't of Justice v. Julian*, 486 U.S. 1, 12 (1988) (courts require a special showing of need before allowing public access to pre-sentence reports); *United States v. Charmer Industries, Inc.*, 711 F.2d 1164, 1176 (2d Cir. 1983) (court may not release a pre-sentence report to third party absent a showing of "a compelling need for disclosure to meet the ends of justice"), the Government believes that filing the exhibit in question under seal is both appropriate and necessary.¹ Accordingly, the

¹For security reasons, the Bureau of Prisons ("BOP") prohibits inmates from possessing copies of their pre-sentence reports, although inmates are entitled to review them. *See BOP Program Statement 1351.05*, at 15-17 (Sept. 19, 2002). Thus, regardless of whether the exhibit is filed under seal, the papers served on petitioner will not contain his pre-sentence report. Instead, they will include a notice instructing the petitioner how to access the document through BOP officials.

Government respectfully requests leave to file the exhibit in question under seal.

Thank you for your consideration of this request.

Respectfully,

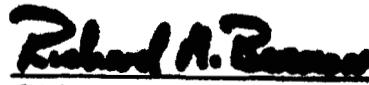
MICHAEL J. GARCIA
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By:


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<u>Application granted.</u>	

SO ORDERED: Date: <u>8/26/08</u>  Richard M. Berman, U.S.D.J.	